

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

DERRICK DARNELL PAYNE,

PLAINTIFF

V.

NO. 3:07CV003-P-D

SHERIFF KENNY DICKERSON, et al.,

DEFENDANTS

ORDER DENYING MOTION

Plaintiff, an inmate currently in the custody of the Mississippi Department of Corrections, filed this complaint *pro se* pursuant to 42 U.S.C. § 1983. Plaintiff's complaint includes claims for false arrest, excessive use of force, false imprisonment and malicious prosecution flowing from his arrest for bank robbery. Through the adoption of a Report and Recommendation, the court has narrowed the number and scope of Plaintiff's claims. This matter is currently set for trial on September 22, 2008.

Presently before the court is Plaintiff's motion *in limine* in which he seeks to exclude from use during the trial any reference to a 1992 conviction for manslaughter and armed robbery and references to a pending charge of capital murder and kidnaping pursuant to Federal Rules of Evidence 403, 404 and 609. Defendants have responded and argue that the prior conviction and pending charge of murder are admissible.

The court finds that admissibility would be best determined in light of the circumstances under which the evidence is being offered. In other words, a ruling as to admissibility will be made during the trial but prior to the introduction of the conviction and the pending charge. Plaintiff's motion (docket entry 53), is therefore, DENIED without prejudice to his right to renew the motion or object to the introduction of such evidence at trial where the parties may be afforded the opportunity to present their arguments outside the presence of the jury.

THIS the 30th day of April, 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE